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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TERI MICHELLE MCCALL, individually,
and as successor in interest for the estate of
ANTHONY JACKSON MCCALL,
deceased,

Plaintiff,

vs.

MONSANTO COMPANY,
Defendant.

Case No.: 2:16-CV-1609-DMG(Ex)

**NOTICE OF SUPPLEMENTAL
AUTHORITY IN SUPPORT OF
PLAINTIFF'S OPPOSITION TO
MONSANTO COMPANY'S
MOTION TO DISMISS**

**Hearing: July 15, 2016
Time: 9:30 am
Location: Courtroom 7
Judge: Hon. Dolly Gee**

Plaintiff brings to the Court's attention a recent district court order denying a motion to dismiss by the Defendant Monsanto Company in a similar Roundup-cancer case within the Eastern District of California. The case is *Mendoza v. Monsanto Company*, 1:16-cv-406-DAD-SMS (E.D. Cal.). The *Mendoza* case was originally filed in this Court. *See Rubio, et al v. Monsanto Company*, 15-cv-7426-DMG-E (C.D. Cal). This Court, however, severed and transferred the Mendoza plaintiff to the Eastern District of California. *See Order Re Motion to Transfer; Motion to Dismiss; and Motion to Stay, Rubio v. Monsanto Company*, 15-cv-7426-DMG-E, Dkt. 63 (Mar. 24, 2016 C.D. Cal). Shortly after the matter was transferred, Monsanto re-filed its motion to dismiss. The Honorable Dale A. Drozd recently ruled on that motion. The order is attached.

1 In *Mendoza*, the court rejected the two primary arguments raised by Monsanto here:
 2 whether the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”)
 3 preempted state law warning claims and whether comments j and k of Restatement
 4 (Second) of Torts § 402A bars design defect claims involving herbicides. *See* Exhibit
 5 A, Order Denying Defendant’s Motion to Dismiss at p. 2-10, *Mendoza v. Monsanto*
 6 *Company*, 1:16-cv-406-DAD-SMS (July 7, 2016 E.D. Cal.). The court acknowledged
 7 the two prior California decisions *Hardeman v. Monsanto Co.*, --- F. Supp. 3d ---, No.
 8 16-CV-00525VC, 2016 WL 1749680, at *1-3 (N.D. Cal. Apr. 8, 2016); *Giglio v.*
 9 *Monsanto Co.*, No. 15CV2279 BTM(NLS), 2016 WL 1722859, at *1-4 (S.D. Cal. Apr.
 10 29, 2016) as being persuasive. *Id.* at 2.

11 This is the fourth order denying Monsanto’s preemption and Restatement (Second)
 12 of Torts challenges within the last three months. *See also Hardeman*, 2016 WL
 13 1749680, at *1-3; *Giglio*, 2016 WL 1722859, at *1-4; *Sheppard v. Monsanto Co.*, No.
 14 16-00043 JMS-RLP, 2016 WL 3629074, at *6-11 (D. Haw. June 29, 2016).¹ Although
 15 *Mendoza*, *Hardeman*, *Giglio*, and *Sheppard* are not binding on this Court, Plaintiff
 16 submits that the orders are persuasive, well reasoned, and provide further support to
 17 deny Monsanto’s motion to dismiss.

18 Dated: July 11, 2016

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19 /s/ R. Brent Wisner
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27 ¹ The *Sheppard* order was previously submitted to this Court as part of a notice of Supplemental
 28 Authority, filed June 30, 2016 (Dkt. 42).

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CERTIFICATE OF SERVICE

I, R. Brent Wisner, hereby certify that, on July 11, 2016, I electronically filed NOTICE OF SUPPLEMENTAL AUTHORITY with the Clerk for the United States District Court for the Central District of California using the CM/ECF system, which shall send electronic notification to counsel of record.

/s/ R. Brent Wisner
R. Brent Wisner